

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): GILREATH, MARK                      Examiner: SHAY, DAVID M.  
Serial No.: 10/531,692                              Group Art Unit: 3769  
Filed: April 18, 2005                              Confirmation No.: 1399  
Title: INTUBATION AND IMAGING DEVICE AND SYSTEM

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DECLARATION OF MARK G. GILREATH UNDER 37 C.F.R. § 1.131

1. I was born in 1966 in Simpsonville, South Carolina, USA.

2. In 1988, I was awarded the degree of BS Finance from Winthrop University, in Rock Hill, South Carolina. In 1999, I was awarded a Masters in Business Administration from Duke University, in Durham, South Carolina.

3. I was employed by Given Imaging Ltd. ("Given Imaging") of Yoqneam, Israel from 1999-2008. From 1999-2000, I held the position of Strategy Consultant; from 2000-2001, I held the position of Vice President, Business Development; from 2001-2002, I held the position of President, Americas; and from 2003-2008, I held the position of Chief Marketing Officer.

4. I am informed that the above-identified application, which is owned by Given Imaging by way of an assignment from me, as the inventor thereof, as recorded at the U.S. Patent and Trademark Office ("USPTO") on April 18, 2005 at Reel 017122, Frame 0190, was filed in the USPTO on April 18, 2005 as a national phase application under 35 U.S.C. § 371 of International Patent Application No. PCT/IL2003/000853, which was filed on October 21, 2003 and claimed the benefit of U.S. Provisional Patent Application No. 60/419,558, filed October 21, 2002.

5. I am informed that the USPTO issued an Office Action on October 20, 2009 wherein the Examiner rejected all of pending claims 1-20 under 35 U.S.C. § 102(e) as being anticipated by Mazzei et al. (U.S. Patent No. 6,840,903 or U.S. Patent Application Publ. No. 2003/0181789).

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6. I am informed that Mazzei et al., upon which all the rejections depend, was first published under U.S. Patent Appl. Publication No. 2003/0181789 on September 25, 2003, which is after the earliest claimed priority date of Applicants' application, October 21, 2002, but is available as a reference against this application under 35 U.S.C. § 102(e) because Mazzei et al. was filed in the USPTO on March 21, 2002, which is prior to October 21, 2002.

7. I submit this declaration on behalf of Given Imaging under 37 C.F.R. § 1.131 as a declaration of prior invention in support of a Response to Office Action to show that the subject matter of the pending claims of this application was conceived of by me, the sole inventor of this application, prior to March 21, 2002, and to show that the Applicant was diligent until filing of a provisional application on October 21, 2002.

8. I am informed that claims 1-20 are pending in this application before the USPTO. Independent claims 1, 11 and 17 as currently pending in this application recite as follows:

1. An intubation tool comprising:
  - a handle;
  - a blade; and
  - at least one imaging unit,said handle and blade being releasably interlockable with each other.
11. A system for intubation, the system comprising
  - an intubation tool, said tool comprising:
    - a handle;
    - a blade;
    - at least one imaging unit; and
    - a transmitter;said handle and blade being releasably interlockable with each other; and
  - a receiving unit for receiving signals transmitted from the transmitter.
17. A device comprising:
  - a handle releasably connected to a blade; and
  - an imager.

9. I have reviewed claims 1-20 pending in this application and aver that I conceived the subject matter of this application, as recited in pending claims 1-20, prior to March 21, 2002. In fact, I distinctly remember a meeting held in Israel in late 2001 wherein my patent attorneys, individuals from Given Imaging and I discussed my conception and embodiments of this invention, as well as and other inventions, as set forth in at least pending

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independent claims 1, 11 and 17 as set forth above. Shortly thereafter, my patent attorneys began drafting a patent application for this invention, which application underwent review and revision until its filing in the USPTO as a provisional patent application on October 21, 2002.

10. I have reviewed the Declaration of Rachel Bentov Under 37 C.F.R. § 1.132 that is being submitted to the USPTO concurrently herewith and its attached Exhibit B, which is a draft patent application named "intubation-draft1.doc" that was saved on February 17, 2002 covering my invention as eventually filed in this application. This document was a first draft patent application that described the invention that I conceived, as discussed in the meeting in late 2001 referred to above, including those subsequently filed in the provisional patent application on October 21, 2002.

11. All subject matter in independent claims 1, 11 and 17 as set forth above, except for the concept of the handle and blade of the intubation tool being releasably interlockable with each other, is disclosed in the draft patent application that is attached as Exhibit B to the Declaration of Rachel Bentov Under 37 C.F.R. § 1.132, which was prepared prior to March 21, 2002.

12. Even though the concept of the handle and blade of the intubation tool being releasably interlockable with each other was not within the first draft patent application as in Exhibit B to the Declaration of Rachel Bentov Under 37 C.F.R. § 1.132, I recall having discussed the concept at the above-described meeting that took place in Israel at the end of 2001. I recall that this concept was part of my original invention prior to March 21, 2002, and this concept was incorporated into subsequent drafts of the patent application covering my invention, as eventually filed in U.S. Provisional Patent Application No. 60/419,558 on October 21, 2002.

13. Accordingly, the subject matter of pending claims 1-20, including independent claims 1, 11 and 17 as set forth above, was conceived by me as the inventor of this application prior to March 21, 2002.

14. Between the date of the meeting in late 2001 and the filing of the provisional application on October 21, 2002, I reviewed several draft patent applications with regard to this invention. Although I do not recall exactly how many or when these drafts were reviewed, I note that 2002 was an extremely busy year for Given Imaging. As a young

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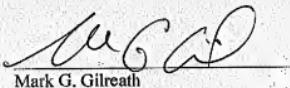
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company at the time, Given Imaging was diligently attempting to secure a place in the commercial market, while at the same time attempting to protect its technology by preparing and filing many patent applications in the related field worldwide. The pressure on us and on our few attorneys was significant.

15. I recall that, during the relevant time period between March 21, 2002 and October 21, 2002, in addition to the above-identified patent application, there were many other unrelated patent applications on which Given Imaging was working on drafting and filing. As a result, Given Imaging's patent attorney had a significant backlog of unrelated applications on which I believe she worked diligently and expeditiously. It is this workload that contributed to the fact that U.S. Provisional Application No. 60/419,558 was not filed until October 21, 2002.

I declare under penalty of perjury that all statements made herein are based upon my own knowledge and believed to be true. I understand that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. § 1001), and may jeopardize the validity of any patent that may be issued from the above-identified patent application.



The image shows a handwritten signature in black ink, appearing to read "Mark G. Gilreath". Below the signature, the name "Mark G. Gilreath" is printed in a smaller, standard font.

Date: August 25, 2010